S.B. CIVIL MISC. APPEAL NO. 1880/2006
(National Insurance Co. Ltd. Vs. Smt.Sushila Devi & ors.)

Date of Order :: 12th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Jagdish Vyas for the appellant

By way of this appeal, the insurer of the vehicle involved in accident seeks to question the award dated 09.11.2005 made by the Motor Accidents Claims Tribunal, Bikaner in Claim Case No.323/2003 awarding compensation in the sum of Rs.4,53,000/- to the wife, minor child and mother of the vehicular accident victim Chhaganlal, in relation to the finding on issue No.3 whereby the Tribunal has rejected its contention for exoneration on the ground of violation of policy condition because the driver of offending vehicle was not holding valid driving licence; and in relation to the finding on issue No.2 on quantification of compensation.

The victim Chhaganlal, about 23 years of age, met with his untimely end on sustaining fatal injuries when the three-wheeler taxi bearing registration No. RJ10 P 3656 he was travelling in, capsized on 15.02.2003 on the road from Chak 4 CHM to Loonkaransar. The claimants sought compensation against the owner, driver and insurer of the said three-wheeler

and submitted that the deceased was earning Rs.4,000/- per month as an agriculture labourer. The registered owner of the vehicle resisted the claim application with the averments, inter alia, that the vehicle had been transferred to one Om Prakash and also submitted that the vehicle driver was holding a valid driving licence. The driver Ramzan Ali also stated general denial of claim averments and submitted that in case of any liability, the same be fastened on the insurer. The insurer of vehicle, while again stating denial of claim averments submitted, inter alia, that the driver was not holding valid and effective driving licence to drive the vehicle in question and despite being aware of such fact, the insured's handing over of the vehicle to such a driver amounted to violation of policy conditions.

After framing of necessary issues and taking evidence led by the parties, the Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid three-wheeler taxi. While considering submission of the insurer for its exoneration in issue No.3 the Tribunal observed, with reference to the evidence produced on record, that the driver Ramzan Ali was admittedly holding a licence to drive Light Motor Vehicle; that according to the registration certificate Ex.8 the gross vehicle weight of the offending vehicle was 750 kg.; that a vehicle weighing upto 7500 kg. was categorised as

Light Motor Vehicle under Section 2 (21) of the Motor Vehicles Act, 1988 ['the Act']; and, therefore, held that driver was holding a valid driving licence. On quantification, the Tribunal did not accept the assertion of the claimants about daily earnings of the deceased at Rs.150/- but put an estimate on his monthly income as agriculture labourer at Rs.3,000/- with reference to the decision of the Hon'ble Supreme Court in the case of State of Haryana Vs. Jasbir Kaur: 2003 RAR (SC) 172; and deducting one-third wherefrom took loss of dependency of the claimants at Rs.2,000/- per month i.e., Rs.24,000/-per annum; and in view of the age of the deceased at about 22-23 years, applied a multiplier of 17 to assess pecuniary loss at Rs.4,08,000/-. The Tribunal further allowed Rs.40,000/- towards non-pecuniary loss and Rs.5,000/- towards funeral expenses and in this manner allowed compensation in the sum of Rs.4,53,000/- and also allowed interest at the rate of 7.5% per annum.

Assailing the award aforesaid, learned counsel appearing for the appellant-insurer strenuously contended that the driver having been authorised only to drive Light Motor Vehicle was not authorised to drive a transport vehicle that was a public service vehicle; that Section 2(21) of the Act cannot be read isolation and if Section 2(47) of the Act with other related provisions and Central Motor Vehicle Rules are

read together, it is clear that a person holding a licence to drive Light Motor Vehicle cannot be permitted to drive a public service vehicle; and violation of policy conditions in the present case is established by the driving licence produced on record. Learned counsel further contended that the claimant, wife of the deceased, admitted that deceased was getting work only for 20 days in a month and in view of such admission, the estimate as put by the Tribunal on monthly income of the deceased at Rs.3,000/- remains on the higher side and the compensation thus awarded in the sum of Rs.4,53,000/- remains excessive.

Having given a thoughtful consideration to the submissions made by the learned counsel and having examined the impugned award, this Court is clearly of opinion that this appeal remains bereft of substance and does not merit admission.

The hyper-technical contentions sought to be raised by the insurer of the category of the vehicles has no bearing on the questions involved in the case for it does not appear that the insurer has led any evidence answering to the requirements of law as laid down and explained by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Swaran Singh & Ors. : (2004) 3 SCC 297 that,-

> "110 (iii) The breach of policy condition e.g. disqualification of the driver or invalid driving

> licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licensed driver or one who was not disqualified to drive at the relevant time."

and further requiring that,-

> "110 (iv) Insurance companies, however, with a view to avoid their liability must not only establish the available defence (s) raised in the said proceedings but must also establish "breach" on the part of the owner of the vehicle; the burden of proof wherefor would be on them."

There is nothing on record to establish that the insured was guilty of negligence or failed to exercise reasonable care in the matter of fulfilling the policy conditions regarding use of the vehicle by a duly licenced driver or by a person who was not disqualified to drive such vehicle. The Tribunal has noticed the statement of the witness produced by the insurer that he did not inquire about the licence from the owner or driver or even from the concerning transport office. Further, there is no evidence to suggest that want of such licence or endorsement

of a particular kind of Light Motor Vehicle in the licence of the said driver was the main or contributory cause to the accident. In this view of the matter, it cannot be said that the insurer has able to establish the conditions requisite for its exoneration; and mere suggestion of the category of vehicle the driver was authorised to drive is of no avail.

Even on merits, the submission does not appear carrying any substance. The driver was holding licence to drive a Light Motor Vehicle and it cannot be said that the three-wheeler taxi in question was not a Light Motor Vehicle. Whether it was a transport vehicle or otherwise would have no bearing so far policy condition of driving by a valid driving licence holder is concerned in view of comprehensive definition of Light Motor Vehicle as contained in Section 2(21) of the Act; and in any case, the insurer cannot be permitted to avoid its liability under the insurance policy with reference to such superficial and hyper-technical suggestions about the category of the vehicle.

So far the quantum of compensation is concerned, on the whole an award of compensation in the sum of Rs.4,53,000/- for the wife, minor child and mother of about 22-23 years old victim cannot be said to be exorbitant or excessive so as to warrant interference in appeal at the instance of the insurer. The claimant has specifically

established that the deceased was an agriculture labourer and the estimate put by the Tribunal on his monthly income at Rs.3,000/- cannot be said to be excessive, whether he was earning 20 days a month or more. Application of multiplier of 17 is also justified. In view of the age of the victim and the claimants, the amount of general damages does also not appear exorbitant. There appears no scope to interfere with the award in question at the instance of the appellant-insurer.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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